



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

**[Docket Number USCG-2019-0083]**

**RIN 1625-AA08**

### **Special Local Regulation; Bush River and Otter Point Creek, Harford County, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing temporary special local regulations for certain navigable waters of the Bush River and Otter Point Creek. This action is necessary to provide for the safety of life on these waters located at Edgewood, Harford County, MD, on May 11, 2019, and May 12, 2019, during a high-speed power boat racing event. This regulation prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander.

**DATES:** This rule is effective from 9:30 a.m. on May 11, 2019 to 6:30 p.m. on May 12, 2019. This rule will be enforced from 9:30 a.m. to 6:30 p.m. on May 11, 2019, and, from 9:30 a.m. to 6:30 p.m. on May 12, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2019-0083 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2674, email Ronald.L.Houck@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
PATCOM	Coast Guard Patrol Commander
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Carolina-Virginia Racing Association of Havre de Grace, MD, notified the Coast Guard that it will be conducting the Flying Point Park Outboard Regatta from 10 a.m. to 6 p.m. on May 11, 2019, and from 10 a.m. to 6 p.m. on May 12, 2019. The high-speed power boat racing event consists of approximately 60 participating outboard hydroplane and runabout race boats of various classes, 9 to 14 feet in length, with 4 to 12 boats racing in 3-lap heats, along a designated, marked racetrack-type course located in Bush River and Otter Point Creek at Edgewood, Harford County, MD. In response, on March 4, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Special Local Regulation; Bush River and Otter Point Creek, Harford County, MD" (84 FR 7310). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this power boat racing race. During the comment period that ended April 3, 2019, we received one comment.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for

making this rule effective less than 30 days after publication in the **Federal Register**.

Due to the date of the event, it would be impracticable to make the regulation effective 30 days after publication in the **Federal Register**. Delaying the effective date of this rule is impracticable and contrary to public interest because it would delay the safety measures necessary to respond to potential safety hazards associated with this marine event.

Immediate action is needed protect participants, spectators, and other persons and vessels during the high-speed race event on these navigable waters.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with the power boat racing event will be a safety concern for anyone intending to operate in or near the event area. The purpose of this rule is to protect event participants, spectators, and transiting vessels on specified waters of the Bush River and Otter Point Creek before, during, and after the scheduled event.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received one public submission to the docket responding to our NPRM published March 4, 2019. We thank the commenter for taking time to review the NPRM and submitting a comment regarding this action.

The comment was in support of the Coast Guard's rulemaking. However, the commenter stated that because high-speed power boats will pass a certain area, the Coast Guard should make sure to inform the public, especially residents around that area.

Patrol vessels assigned by the COTP Maryland-National Capital Region will be present to monitor the event and enforce the special local regulation. In addition, the

COTP Maryland-National Capital Region will notify the public of the specific enforcement times of the regulated area by all appropriate means to affect the widest publicity among the affected segments of the public, including publishing a notice in the **Federal Register** and an article in the Local Notice to Mariners. Broadcast Notice to Mariners will also be made for this event, to begin prior to that start of the scheduled event, and to continue to notify the public, until immediately after its completion.

There are no changes in the regulatory text of this rule from that proposed in the NPRM.

This rule establishes a special local regulation to be enforced from 9:30 a.m. to 6:30 p.m. on May 11, 2019, and from 9:30 a.m. to 6:30 on May 12, 2019. The regulated area will cover all navigable waters of the Bush River and Otter Point Creek, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline of the Bush River at latitude 39°27'15" N., longitude 076°14'39" W. and thence eastward to the eastern shoreline of the Bush River at latitude 39°27'03" N., longitude 076°13'57" W.; and bounded to the south by the Amtrak Railroad Bridge, across the Bush River at mile 6.8, between Perryman, MD, and Edgewood, MD. The duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the power boat racing event, scheduled from 10 a.m. until 6 p.m. on May 11, 2019, and May 12, 2019.

Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this regulation must immediately depart the regulated area. A person or vessel that desires to transit, moor, or anchor within the regulated area must first obtain authorization from the COTP Maryland-National Capital

Region or PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on VHF-FM channel 16, or the PATCOM on VHF-FM channel 16 and channel 22A. A vessel within the regulated area must operate at safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as Official Patrols would be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign. Official Patrols enforcing this regulated area can be contacted on VHF-FM channel 16 and channel 22A. If permission is granted, the spectator may enter the designated spectator area or must pass directly through the regulated area as instructed by PATCOM. A spectator vessel must not loiter within the navigable channel while within the regulated area. Official Patrols will direct spectator vessels to the designated spectator area. All spectator vessels within the designated spectator area must be anchored or operate at a No Wake Speed while within the designated spectator area. Only participants and Official Patrols are allowed to enter the race area. The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event date and times.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, duration and time of year of the regulated area, which will impact a small designated area of the Bush River and Otter Point Creek for 18 total enforcement hours. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area. Moreover, the rule will allow vessels to seek permission to enter the regulated area, and vessel traffic will be able to safely transit the regulated area once the COTP or PATCOM deems it safe to do so.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This



rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States. The temporary regulated area will be in effect for 33 hours. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Memorandum For Record for Categorically Excluded Actions supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

**PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.501T05-0083 to read as follows:

**§ 100.501T05-0083 Special Local Regulation; Bush River and Otter Point Creek, Harford County, MD.**

(a) Definitions. As used in this section:

Buffer Zone is a neutral area that surrounds the perimeter of the Race Area within the regulated area described by this section. The purpose of a buffer zone is to minimize potential collision conflicts with marine event participants or race boats and spectator vessels or nearby transiting vessels. This area provides separation between a Race Area and a specified Spectator Area or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Coast Guard Patrol Commander (PATCOM) means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means a person or vessel registered with the event sponsor as participating in the Flying Point Park Outboard Regatta or otherwise designated by the event sponsor as having a function tied to the event.

Race Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a race area within the regulated area defined by this section.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

Spectator Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part.

(b) Locations. All coordinates reference Datum NAD 1983.

(1) Regulated area. All navigable waters of Bush River and Otter Point Creek, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline of the Bush River at latitude 39°27'15" N., longitude 076°14'39" W. and thence eastward to the eastern shoreline of the Bush River at latitude 39°27'03" N., longitude 076°13'57" W.; and bounded to the south by the Amtrak Railroad Bridge, across the Bush River at mile 6.8, between Perryman, MD and Edgewood, MD. The following locations are within the regulated area:

(2) Race Area. The race area is a polygon in shape measuring approximately 540 yards in length by 270 yards in width. The area is bounded by a line commencing at position latitude 39°26'33.1" N., longitude 076°15'46.8" W.; thence westerly to latitude 39°26'33.1" N., longitude 076°15'49.3" W.; thence northerly to latitude 39°26'37.1" N., longitude 076°15'52.4" W.; thence northeasterly to latitude 39°26'40.0" N., longitude 076°15'52.5" W.; thence easterly to latitude 39°26'45.9" N., longitude 076°15'32.2" W.; thence southeasterly to latitude 39°26'45.3" N., longitude 076°15'30.0" W.; thence southerly to latitude 39°26'43.8" N., longitude 076°15'29.1" W.; thence southerly to latitude 39°26'42.2" N., longitude 076°15'28.9" W.; thence southwesterly to latitude

39°26'40.8" N., longitude 076°15'29.3" W.; thence westerly terminating at point of origin.

(3) Buffer Zone. The buffer zone surrounds the entire race area described in the preceding paragraph of this section. This area is a polygon in shape and provides a buffer around the perimeter of the race area. The area is bounded by a line commencing at the shoreline at Flying Point Park at position latitude 39°26'31.9" N., longitude 076°15'32.5" W.; thence westerly to latitude 39°26'30.5" N., longitude 076°15'52.7" W.; thence northerly to latitude 39°26'39.9" N., longitude 076°16'00.0" W.; thence easterly to latitude 39°26'51.6" N., longitude 076°15'26.7" W.; thence southerly to latitude 39°26'37.0" N., longitude 076°15'22.5" W.; thence southerly to latitude 39°26'33.7" N., longitude 076°15'22.8" W., located at the shoreline at Flying Point Park.

(4) Spectator Area. The designated spectator area is a polygon in shape and is bounded by a line commencing at position latitude 39°26'39.9" N., longitude 076°15'23.3" W.; thence east to latitude 39°26'39.6" N., longitude 076°15'19.4" W.; thence south to latitude 39°26'36.6" N., longitude 076°15'18.7" W.; thence west to latitude 39°26'37.0" N., longitude 076°15'22.5" W.; thence north to point of origin.

(c) Special local regulations: (1) The COTP Maryland-National Capital Region or PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area must immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or PATCOM may terminate the event, or a

participant's operations at any time the COTP Maryland-National Capital Region or PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the PATCOM to request permission to either enter or pass through the regulated area. The PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator may enter the designated Spectator Area or must pass directly through the regulated area as instructed by PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) A person or vessel that desires to transit, moor, or anchor within the regulated area must first obtain authorization from the COTP Maryland-National Capital Region or PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(5) Only participant vessels and official patrol vessels are allowed to enter the race area.

(6) Spectators are only allowed inside the regulated area if they remain within the designated spectator area. All spectator vessels must be anchored or operate at a No

Wake Speed within the designated spectator area. Official patrol vessels will direct spectator vessels to the spectator area. Spectators must contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at safe speed and without loitering.

(7) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event date and times.

(d) Enforcement officials. The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) Enforcement periods. This section will be enforced from 9:30 a.m. to 6:30 p.m. on May 11, 2019, and, from 9:30 a.m. to 6:30 p.m. on May 12, 2019.

Dated: April 15, 2019

Joseph B. Loring,  
Captain, U.S. Coast Guard,  
Captain of the Port Maryland-National Capital Region.  
[FR Doc. 2019-07910 Filed: 4/18/2019 8:45 am; Publication Date: 4/19/2019]